and the method of service is prescribed in the sub-section. This was not done, but by virtue of the proviso to the sub-section this irregularity does not invalidate the acquisition.

Section 12(ii) requires that a copy of the award under section 11 shall be served on all persons interested provided that their addresses can be ascertained after reasonable enquiry when the award is made. All that the Affidavit of the Notice Server says is that he tried to find the registered proprietor and made various enquiries to that end without success. He does not say what enquiries he made or when he made them nor did he say at what time he visited the land which it will be remembered was rubber land in bearing nor did he say where he affixed the notice under section 9(i). It is obvious in paragraph 2 of the applicant's Affidavit that the land was producing rubber at that time. Quit rent was paid and accepted for the land for the years 1956, 1957 and 1958 and the applicant would scarcely have paid this were she not in active occupation of the land. I cannot believe that the Notice Server made reasonable enquiries as required by section 12(ii) to ascertain the address of persons who may be interested in the award. Had he visited the land at the time the trees were being tapped or the latex was being collected he must have been able to ascertain the address of the owner of the land. Nor do I consider that one visit to the land to fix the notice required by section 9(i) and one visit to the land with the copy of the award under section 11, is making "reasonable" enquiry within the meaning of section 12. "Reasonable" in this context clearly means "diligent". Article 13 of the Constitution of the Federation of Malaya demands that no person shall be deprived of his property except in accordance with the law. It is essential that the intention as well as the provisions of the enactment be observed. It is a matter of natural justice that before property is taken compulsorily and compensation fixed, the owner should be made aware of the proceedings, where it is humanly possible to do so, so that he may be heard. The Enactment makes it quite clear that every reasonable effort should be taken to ensure that the owner and occupier are served with notice of the proceedings. I am not satisfied that the Notice Server made reasonable enquiries in this case to ascertain the address of the owner or occupier and I consider that that in itself is a special reason for enlarging the time in accordance with the provisions of section 22(iv). In addition to this, although the hearing was conducted on the 15th June 1956 and the award issued on the 26th November, 1956, Quit Rent (for which the applicant was liable because the Government had not and still has not taken possession of the land) was paid in due time and accepted for the years 1956, 1957 and 1958 yet no mention was made by the Land Office officials that the land had been compulsorily acquired. Had they done so, when the Quit Rent was paid for 1956 the applicant would still have been within the period provided by the Enactment for her to apply under Section 22 to have the matter referred to the Court.

On the facts of this case I am satisfied that there are special reasons for enlarging the time under section 22 of the Enactment:

(a) The Applicant was not served either with the Notice of the intention to acquire under section 9 or of Notice of the award under section 12 although had the notice server made diligent enquiries he certainly could have ascertained the address of the occupier because the land was rubber land in bearing;

and (b) That although the applicant called at the land office to pay her quit rent for 1956 within the six months she was not told that the land had been acquired although the Collector knew that she was unaware of the proceedings under the enactment in respect of the land.

These two factors in my opinion entitle the applicant to ask for the indulgence of the Court to ask that she may be relieved from the legal bar imposed by section 22 of the Enactment. I therefore allow the application with costs.

Application allowed.

Solicitors: *Bannon & Bailey.*

THE OFFICIAL ASSIGNEE v. EK LIONG HIN LTD.

[J. C. (Lord Denning, Lord Jenkins and the Rt. Hon. L. M. D. de Silva) January 14, 1960]

[Privy Council Appeal No. 8 of 1959]

Money and Moneylending — Loans on security of goods by firm whose principal business was as ship-owners, warehousemen, rubber dealers, etc. — "Carrying on business not having for his primary object the lending of money" — Moneylenders Ordinance (Cap. 193), ss.2(d) and 5(1).

The respondent company carried on the primary business of rubber merchants and shippers and had storage facilities there for storage of goods. They also made loans to their customers on the security of goods stored in their warehouses. They did not advertise the fact that they were willing to lend money and they had no separate moneylending business. A firm, to whom the company had lent money, got into financial difficulties and the company sold the goods deposited in their warehouses as security, crediting the proceeds against the loan. The firm became bankrupt and the Official Assignee claimed the value of the goods sold, alleging that the company were moneylenders within the Moneylenders Ordinance and admittedly had not complied with the provisions of that Ordinance.

Held: (1) the words "for the purposes whereof he lends money" in clause (d) of the exceptions to the definition of a "moneylender" in section 2 of the Moneylenders Ordinance do not indicate that the money lent must be shown to have been lent for the purposes of the primary objects of the business. The word "whereof" refers to the business and not to the primary

objects. It is sufficient that the moneylending transactions are undertaken genuinely for the purposes of the business, that is with the object of preserving, advancing or otherwise assisting the business and not necessarily in connection with its primary objects. It is sufficient if the money is lent in the course of and for the purposes of the business as a whole, and not merely of its primary objects;

(2) in this case the loans were made in the course and for the purposes of the company's business and the company was not a "moneylender" within the meaning of the Moneylenders Ordinance.

Furber v. *Fieldings Ltd.* applied. *Edgelow* v. *MacElwee* explained.

Cases referred to:—

(1) *Furber* v. *Fieldings Ltd.* (1907), 23 T.L.R. 362.

(2) *Edgelow* v. *MacElwee* [1918] 1 K.B. 205.

PRIVY COUNCIL APPEAL. Appeal by the Official Assignee of the property of Koh Hor Khoon and others, bankrupts, from the judgment of the Court of Appeal of the Colony of Singapore [1958] M.L.J. 247) allowing the appeal by the respondents from the judgment of Knight J.

Eustace Roskill, Q.C. and *Basil Eckersley* for the appellant.

C. P. Harvey, Q.C. and *I. S. Hill* for the respondents.

The facts are set out in the judgment of the Board delivered by, —

The Rt. Hon. L. M. D. de Silva: The appellant, who is the plaintiff in this case, is the Official Assignee of the property of four persons who had been adjudicated bankrupt on the 27th February, 1953, and who, before that date, had been trading together under the name of Koh Bian Seng. The firm had borrowed certain sums of money from the defendant company (respondent to this appeal) on the security of a quantity of galvanised iron sheets placed in its possession. In this action instituted in the High Court of Singapore the appellant asked for the return to him by the respondent of the iron sheets or their value and for certain other relief on the ground that the respondent was a moneylender within the meaning of that term in the Moneylenders Ordinance of Singapore (Cap. 193 Laws of the Colony of Singapore 1955 Edition), that it had failed when dealing with Koh Bian Seng to comply with the formalities required by section 5 of the Ordinance and that consequently the security taken could not be enforced.

Section 5 of the Ordinance is to the following effect:—

"5.—(1) No contract for the repayment by a borrower or his agent of money lent to him or to any agent on his behalf by a moneylender or his agent on or after the first day of January, 1936, or for the payment by him of interest on money so lent, and no security given by the borrower or by any such agent as aforesaid in respect of any such contract, shall be enforceable, unless a note or memorandum in writing of the contract in the English language be signed by the parties to the contract or their respective agents, or, in the case of a loan to a partnership firm, by a partner in or agent of the firm, and unless a copy thereof authenticated by the lender or his agent be delivered to the borrower or his agent, or, in the case of a loan to a partnership firm, to a partner in or agent of the firm, before the money is lent; and no such contract or security shall be enforceable, if it is proved that the note or memorandum aforesaid was not so signed before the money was lent or before the security was given, as the case may be:".

There is a proviso to this sub-section and three sub-sections (2), (4) and (5) which have no bearing on the matter under consideration in this case.

Sub-section (3) reads

"(3) The note or memorandum aforesaid shall contain all the terms of the contract, and in particular shall show separately and distinctly —

(a) the date of the loan;

(b) the principal; and

(c) the rate of interest per centum per annum payable in respect of such loan or, where the interest is not expressed in terms of a rate per centum per annum, the amount of such interest."

The respondent admits that the formalities required by the section were not observed but denies that it is a moneylender. The High Court of Singapore held that it was. On appeal the Court of Appeal held that it was not. This is an appeal from that decision.

Under section 2 of the Moneylenders Ordinance of Singapore "moneylender" is defined thus

"'moneylender" shall include every person whose business is that of moneylending, or who carries on or advertises or announces himself or holds himself out in any way as carrying on that business, whether or not that person also possesses or earns property or money derived from sources other than the lending of money, and whether or not that person carries on the business as a principal or as an agent; but shall not include . . . . . ."

then follow certain exceptions (a), (b), (c), (d), (e) and (f) of which the only one relevant on the facts of this case to the question to be decided is

" (d) any person *bona fide* carrying on the business of banking or insurance, or *bona fide* carrying on any business not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money;".

The definition is the same as that to be found in section 6 of the English Act of 1900 except that the words "whether or not that person also possesses or earns property or money derived from sources other than the lending of money" do not appear in the English Act. The Singapore Ordinance also contains (section 3) the following provision not to be found in the English Act.

"3. Save as excepted in paragraphs (a), (b), (c), (d), (e) and (f) of the definition of "moneylender" in section 2, any person who lends money at interest or who lends a sum of money in consideration of a larger sum being repaid shall be presumed, until the contrary be proved, to be a moneylender."

The respondent admits that it carries on the business of moneylending but claims that it is not a moneylender within the meaning of the Ordinance on the ground that it is a person, which, in the language of section 2 (d) (see above), carries on "a business not having for

its primary object the lending of money, in the course of which and for the purposes whereof it lends money".

It has been found by the learned trial Judge that "there is no suggestion that the defendant Company's primary object is moneylending — in fact they are rubber merchants and shippers — and the only question for determination is whether these loans were made 'in the course of their business and for its purposes'."

It is upon this question that the Courts in Singapore have disagreed and it is the only question for decision on this appeal. It is common ground that if the respondent is held as a result of the answer to the question to be a money-lender this appeal should be allowed and that if it is held not to be a money-lender the appeal should be dismissed.

The respondent is a limited company incorporated in Singapore in 1948 with a nominal capital of 2,000,000 dollars and assets approximately of the value of 10,000,000 dollars. Its primary business, as found by the trial judge, was that of "rubber merchants and shippers". They had a rubber estate and ships that plied between Singapore and Indonesia. In 1951 they started a godown storage department as a facility for their customers and in the same year they also started as an additional facility to make loans on the security of the goods stored in their godowns. The audited figures in the balance sheet "at 31st December 1952" show that out of their total assets of about 10,000,000 dollars about 1,000,000 was out on loan. They made loans only to selected customers who stored goods with them. They did not advertise the fact that they were willing to lend money. It does not appear to what extent the moneys raised were utilised by the borrowers in connection with the other branches of the respondent's business and it is assumed for the purposes of this judgment that a large part of it was not so used.

The learned trial Judge opened his judgment with the words "The facts in this case are not in dispute". No question of credibility arose in this case and the lowest at which the case for the respondent on the facts can be viewed is that the witnesses called by it believed what they said even if it can be suggested that they were mistaken in certain inferences of fact which they made.

On the question whether the respondent "lent money (a) in the course of their business and (b) for the purposes of their business" Whyatt C.J., who wrote the principal judgment of the Court of Appeal said:—

"As regards (a), it is clear from the evidence that these loans were made in accordance with the normal commercial practice of shipping and godown companies in Singapore and therefore it follows, in my view that they were made in the course of the appellants' business. As regards (b), the evidence shows that the purpose of these loan transactions was to prevent the appellants losing customers to their competitors and it cannot, in my view, be said that money lent for such a purpose was not lent for the purposes of the appellants' business. As the appellants' godown manager put it; "If we did not allow certain customers loans against their goods, we would lose a lot of them. Several of our customers who use our godown storage also use our ships". "

Their Lordships agree with the conclusions arrived at by the Court of Appeal. It was said for the appellant that the evidence did not warrant a finding that there was "a normal commercial practice" as found. There was evidence, that "several other firms do this sort of business which is a useful facility for members of the business community". So that even if the practice was not "normal" in the strict sense of the word it was not infrequent. The money-lending transactions could not properly be regarded as a separate business and, as observed by the learned Chief Justice, it was never suggested in the course of the argument before the Court of Appeal that it was. They were undertaken in the course of the previous business and as a part of its activities as a whole. It also appears from the evidence that they were undertaken by offering facilities to retain the existing customers and to gain fresh ones and thus to preserve and advance the business previously done. They can therefore legitimately be said to have been undertaken and carried on for the purposes thereof.

Upon the question discussed in the preceding paragraph the learned trial Judge said:—

"The evidence on this point is very slight. The manager of defendant Company's godown department stated that unless they allowed these facilities to persons who stored their goods in the Company's godowns, these customers would go elsewhere. This, of course, might result in a loss to the Company's godown business though I do not see how its primary objects i.e. rubber trading and shipping, would be affected. It is true the witness inferred that if customers left the Company's godowns they might cease to use the Company's ships — but there is no concrete evidence in this regard whatsoever and mere inference, as I see it, is wholly insufficient."

It will be seen that the learned trial Judge was of the opinion that there was not sufficient material upon which he could accept the correctness of the view which, as a matter of business judgment, was held by the company, that if the money-lending transactions had not been undertaken some of the customers might have ceased to do business with the company in spheres (other than that of moneylending) such as shipping. In their Lordships' opinion the correctness of the view held by the company is immaterial to their case. The important thing is that it was genuinely held. If it was, then the money-lending transactions were carried out with the object of preserving and advancing the business and therefore for the purposes of the business. The trial Judge refused to accept the correctness of the view held by the company but he did not hold, and the whole tenor of his judgment indicates that he would not have held, that the view was not genuinely held. Even if the view was incorrect, in the words of the Court of Appeal, "the evidence shows that the purpose of these loan transactions was to prevent the

respondents (appellants in the Court of Appeal) losing customers to their competitors" and therefore they were undertaken for the purposes of the business. It would be most unsafe to hold that a business view such as the one mentioned was in fact incorrect without very much more investigation than has taken place. And, as already stated, correctness was immaterial so long as it was genuinely held.

The trial Judge seems to have thought that the words "for the purposes whereof he lends money" indicate that the money lent must be shown to have been lent for the purposes of the primary objects of the business. Their Lordships do not think this is the true construction of the subsection. "Whereof" refers to the business and not to the primary objects. It is sufficient in their opinion that the money-lending transactions are undertaken genuinely for the purposes of the business, that is, with the object of preserving, advancing or otherwise assisting the business and not necessarily in connection with its primary objects.

Their Lordships would observe that the decision of Phillimore J., in *Furber* v. *Fieldings (Limited)*[1] has followed the same general line of reasoning as their own. In that case the question arose whether the plaintiff was a moneylender within the meaning of the Moneylenders Act, 1900. If he had been his claim would have failed. He carried on the business of a surveyor, valuer and auctioneer and also lent money. It was argued for him that by reason of the provision in section 6 (d) of that Act (identical with section 2 (d) of the Singapore Ordinance) he was not a moneylender. It appeared from the evidence that "substantially, any person who asked him for a loan on the security of chattels would receive that loan if the security were sufficient unless there was some personal objection to the applicant", and that "his object in advancing money upon bills of sale was that by that means he obtained a valuation fee, in the first instance, and the business also brought him in touch with a class of persons from whom he got other business. He charged 15 percent interest as a regular rate. He never advertised or paid commissions to people introducing business, and he never discounted bills or lent money on personal security". It was argued for the defendants that though the plaintiff was a person who came within the first part of the section as he was a "person who carried on a *bona fide* business not having for its primary object the lending of money" yet he did not come within the second part of the section because the moneylending transactions were not "transactions in that business". It was argued that "the large sum lent by the plaintiff's firm had not been lent in the course of his business of valuers or auctioneers, and to say that the business of advancing money could be run together with and help the other business was a very different thing from saying that the lending of money was a natural incident of the business of an auctioneer and surveyor" and further that because the business of valuers and auctioneers which the plaintiff carried on was a business which did not involve the lending of money, the moneys lent were not lent in the course of carrying on that business within the meaning of section 6 of the Act. The facts (though not the inferences) as stated in the above argument appear to have been admitted. Phillimore J., held that the plaintiff had brought himself within section 6 (d) and was not a moneylender within the meaning of the Act. The judgment has not been reported in detail but it does not appear that the fact that the plaintiff secured valuation fees was the basis of, or a principal point in, the decision.

The case of *Edgelow* v. *MacElwee*[2] was cited by the appellant. In that case McCardie J., said "If the Court comes to the conclusion that the solicitor carries on the actual business of a moneylender as well as the vocation of a solicitor then his professional calling will not free him from the requirement of registration under the Act of 1900". (Registration is a requirement of the English Act though not of the Singapore Ordinance*.) Their Lordships agree. The mere fact that he carried on the vocation of a solicitor will not have released him. It was necessary to consider whether the primary object of his business was moneylending and, if not, whether the moneylending took place "in the course of and for the purposes" of that business. In the case considered by McCardie J., it was found on the facts that "the vocation of a solicitor, so far as he carried it on, was used as a mere disguise in order to give a colourable professional appearance to the course of ordinary moneylending transactions". The primary object of the business was moneylending and the solicitor could not therefore have been heard to say that the provisions of the Money Lending Act, 1909, were not applicable to him. There are dicta in McCardie J.'s, judgment upon which an argument was based before their Lordships that the exception could not be utilised by a person who had not shown that the money lent was used in connection with the primary objects of the business. As already stated their Lordships are of opinion that this argument is not sound. It is sufficient if it is lent in the course of and for the purposes of the business as a whole, and not merely of its primary objects.

Figures based on the accounts produced in the case were placed before their Lordships to show that the profits from the moneylending branch of the business for the particular year to which they related were large when compared with other profits. It was suggested that these figures gave an indication of the relative size of the moneylending business when compared with other business done. Their Lordships cannot accept this suggestion. In any particular year the profits from the other business may be very low or even show a loss for reasons connected with that particular year. Without taking into account (this has not been done) this and other relevant factors no inference can

* Under the new Moneylenders Ordinance, 1959, registration is a requirement.

be drawn. In any case there is a finding of fact by the trial Judge affirmed by the Court of Appeal that the primary object of the business is not moneylending and consequently the submission loses most if not all its relevance.

For the reasons which they have given their Lordships will humbly advise Her Majesty that the appeal be dismissed. The appellant will pay the costs of the appeal.

Appeal dismissed.

Solicitors: *Slaughter & May; E. F. Turner & Sons.*

MATTHEW LIM v. GAME WARDEN, PAHANG

[A. Cr. J. (Adams J.) September 18, 1959]

[Raub — Criminal Appeal No. 8 of 1959]

Criminal Procedure — Statement to the police in the course of investigation — Use of prohibited — Exception — Criminal Procedure Code (Cap. 6), ss. 113 and 173(f).

Trial — Speedy trial — Observations on.

The effect of section 113 of the Criminal Procedure Code is to prohibit absolutely the use of any statement made by a person to a police officer during the course of police investigation as evidence in Court with one exception and one exception only. This exception allows the use of a statement made by a person to a police officer during the course of police investigation for the purpose of impeaching the credit of a witness in the manner provided by the Evidence Ordinance. The procedure is quite clearly laid down in the section and may be summarised as follows:

(a) the accused or the prosecutor must request the Court to refer to any statement made by such witness to a police officer in the course of police investigation;

(b) the Court may then if it is expedient in the interest of justice direct the accused to be furnished with a copy thereof;

(c) the statement may then be used to impeach the credit of such witness;

(d) such statement must be properly proved.

The record must show that these provisions have been complied with and terms such as "treating the witness as hostile" should be avoided. Once this has been done and it is proved that the previous statement when compared with the evidence given in Court contains material inconsistencies the witness's credit is impeached and his evidence becomes worthless because the witness himself has been shown to be unworthy of credit.

Cases referred to:—

(1) *Muthusamy* v. *Public Prosecutor* [1948] M.L.J. 57.

(2) *Jusoh bin Awang* v. *Public Prosecutor* [1950] M.L.J. 69.

MAGISTRATE'S CRIMINAL APPEAL.

Appellant in person.

J. P. Kirby (Sr. Federal Counsel) for the respondent.

Adams J.: The brief facts leading up to this appeal were that the defendant/Appellant, Matthew Lim, and one Chin Fong Ching, who has not appealed, were charged under section 26 of the Wild Animals and Birds Protection Ordinance, 1955 for shooting a Rusa without a licence and also for shooting a Rusa during the closed season contrary to section 21 of the Ordinance. The date of the alleged offence was 22nd July, 1957. A summons was duly applied for and was issued on the 6th May, 1958 and the case came up for hearing before the learned Magistrate at Temerloh on the 24th of July, 1958. It will be noted that this is a year after the commission of the alleged offence.

The evidence consisted of the crew of the Magna Vox vehicle operating in the Triang area, but it is only the 1st, 2nd and 3rd prosecution witness who might have been able to provide the evidence to prove the charge against the two accused. However, quite understandably, when the case came on for trial these three witnesses were unable to remember anything about the event which had taken place a year before.

The record shows in the case of the three witnesses that the Prosecution sought to remedy this defect memory by seeking to impeach the credit of the witness under section 113 of the Criminal Procedure Code. In the case of the 1st and 3rd prosecution witness this had no effect at all and neither was able to remember anything. In the case of the 2nd prosecution witness, however, the witness did then purport to remember the events that took place on the 22nd July, 1957 after the statement had been put to him and on that evidence the learned Magistrate convicted the defendants, in spite of the fact that there were material differences between his evidence before his previous statement was put to him and his subsequent evidence.

The effect of section 113 of the Criminal Procedure Code has been fully discussed by Taylor J. in *Muthusamy* v. *Public Prosecutor*[1] which was followed by Briggs J. in *Jusoh bin Awang* v. *Public Prosecutor*[2]. All Magistrates should be familiar with this case and are advised to read it before using section 113(ii) of the Criminal Procedure Code. Briefly the effect of section 113 of the Criminal Procedure Code is to prohibit absolutely the use of any statement made by a person to a Police Officer during the course of Police investigation as the evidence in Court with one exception and one exception only. This exception allows the use of a statement made by a person to a Police Officer during the course of Police investigation for the purpose of impeaching the credit of a witness in the manner provided by the Evidence Ordinance. The procedure is quite clearly laid down in the section namely:—

(a) the accused or the prosecutor must request the Court to refer to any statement made by such witness to a Police Officer in the course of Police investigation;

(b) the Court may then if it is expedient in the interest of justice direct the accused to be furnished with a copy thereof;

(c) the statement may then be used to impeach the credit of such witness;

(d) such statement must be properly proved.

The record must show that these provisions have been complied with and terms such as "treating the witness as hostile" should be avoided. Once